

REMARKS

This Amendment is being filed in response to the Office Action mailed on February 20, 2007, which has been reviewed and carefully considered.

By means of the present amendment, the current Abstract has been deleted and substituted with the enclosed New Abstract which better conforms to U.S. practice. Further, the specification has been amended to better conform to U.S. practice and to correct typographical errors.

In the Office Action, restriction was required as between Species I-VI. Applicants hereby elect with traverse Species I for prosecution. Species I corresponds to at least Figure 1. Claims 1-4, 10 and 13-17 are readable on this group. Claim 1 is believed to be generic.

Arguments in Support of Traversal of Restriction

It is respectfully submitted that the restriction is not proper for at least the following reasons. MPEP §806.05(c) specifically recites:

To support a requirement for restriction, both

two-way distinctness and reasons for insisting on restriction are necessary, i.e., separate classification, status, or field of search.
(Emphasis added)

Example I given in MPEP §806.05(c) related to a proper restriction, also recites:

Where a combination as claimed does not set forth the details of the subcombination as separately claimed and the subcombination has separate utility, the inventions are distinct and restriction is proper if reasons exist for insisting upon the restriction; i.e., separate classification, status, or field of search.
(Emphasis added)

It is respectfully submitted, that the requirement for a proper restriction of showing including a proper reason such as "separate classification, status, or field of search" has not been shown. Rather, the only reason given is a conclusory statement stating that the "species are independent and distinct because each ...[is directed] to independent embodiment that is not obvious one over another."

It is respectfully submitted that each of the claims are drawn essentially to a single embodiment and variations thereof (see, FIG 1 of the present patent application) defining the same essential features and are not drawn to separate species.

The MPEP in §806.03 makes clear that (emphasis provided)
"[w]here the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required." The MPEP goes on further to state the motivation for the above requirement is "because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition."

The MPEP in §803 makes clear that a restriction between patentably distinct inventions is only proper if the inventions are independent or distinct as claimed and there is a serious burden on the examiner if a restriction is not required. A serious burden on the examiner is prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search (see, further MPEP §808.02). However, where "the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions." Yet, the Office Action has done no more than to state that they are separate and

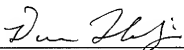
distinct without any suitable showing or explanation for this distinction.

Accordingly, it is respectfully requested that the restriction requirement be withdrawn and that the claims be examined on the merits. In the event that this restriction requirement is upheld, it is respectfully requested that it be restated in a non-final form with support for the requirement so that Applicants may address that support in a subsequent response.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Early consideration and action on the merits are solicited.

Respectfully submitted,

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Enclosure: New Abstract

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